

REMARKS

Claims 10, 11 and 18 were previously pending in the present application.

In this Amendment, Applicant has amended Claim 10 to cancel the recitation, "with an impermeability to moisture of less than 5% fluid loss per year". Applicant has further added a new Claim 20, depending from Claim 10. Support for the amendments is found, for example, on Page 5, Lines 21-22 of the application as originally filed. No new matter has been introduced.

With this Amendment, Claims 10, 11, 18 and 20 are currently pending and under consideration. In the event the Examiner determines that this Amendment does not place this application in condition for allowance, it is further respectfully requested that the claim amendments submitted herewith be entered in order to place the claims in better form for consideration on appeal, should an appeal be pursued.

The Examiner has rejected Claims 10 and 11 under 35 U.S.C. §103(a) as allegedly unpatentable over U.S. Patent No. 3,757,979 to Berghahn (hereinafter "Berghahn") in view of U.S. Patent No. 5,853,833 to Sudo (hereinafter "Sudo'833").

Applicant respectfully submits that the rejection is overcome in light of the following remarks. Neither Berghahn nor Sudo'833, taken alone or in combination as alleged by the Examiner, teach or suggest the combination of features recited in Claims 10 and 11.

Claim 10 recites a package for holding a dental implant. The package includes, *inter alia*, a capsule consisting of cyclic olefin copolymer and a cap formed of low-density-polyethylene.

Berghahn discloses, “a container with a special safety closure-bottle assembly designed to deter children from opening such bottles containing hazardous substances” (*see*, Col. 1, Lines 3-8 of Berghahn). The container of Berghahn is specifically designed for pills and non-liquid medicaments, as evidenced by the description at Col. 1, Lines 5-8 and the mechanical structure of the container. Thus, Berghahn does not provide any suitable premise for a liquid container consisting of a special material. Moreover, Berghahn is completely silent on “cyclic olefin copolymer” (hereinafter “COC”).

Sudo’833 teaches a sanitary container and a production process thereof, wherein the container includes a base of COC but with a requisite coating in order to store medicine for a long time (*see*, Col. 1, Lines 6-15 of Sudo’833). Specifically, Sudo’833 teaches the use of COC as an example of container materials, all of which are only disclosed in combination with an inorganic coating. Stated differently, the inorganic coating is indispensable to implement the sanitary container of Sudo’833, because the inorganic coating increases the container’s transmission resistance to oxygen and nitrogen (*see*, Col. 2, Line 65 - Col. 3, Line 1-2 of Sudo’833). A person of ordinary skill in the art would understand that collectively the inorganic coating and the base of COC are the minimum components required to form a sanitary container of Sudo’833.

In the Official Action, the Examiner acknowledges that, “Berghahn fails to teach that the capsule consists of exclusively of cyclic olefin copolymer because Berghahn does not specifically teach cyclic olefin copolymer” (*see*, Page 3, Lines 6-8 of the Official Action, emphasis added).

It is Applicant's understanding from the above statement, the Examiner has alleged that the container of Berghahn does not require an inorganic layer and that the teaching of Sudo'833 is only relied upon for the alleged teaching of COC as a suitable material for stable and sanitary storage of medicine.

However, Applicant respectfully submits that it is improper to ignore Berghahn and Sudo'833's guidance on the constituent elements of a sanitary container, and doing so is highly suggestive of hindsight reasoning by the Examiner. Sudo'833 clearly teaches that the use of a cyclic olefin polymer or its hydrogenation product is not satisfactory due to the transmission levels of oxygen and nitrogen. Thus, Sudo'833 only teaches the use of cyclic olefin polymers or hydrogenation products thereof, in combination with an inorganic coating.

The Examiner has argued that the above characterization of Sudo'833 is irrelevant, as neither Berghahn nor the Applicant's claimed invention is concerned with gas impermeability (*see*, Page 7, Lines 2-4 of the Official Action). Applicant respectfully disagrees. Both Sudo'833 and Berghahn are concerned with the storage of medicine. A person of ordinary skill in the art, under the teaching of Berghahn and aware of the inherent deficiencies of Berghahn, would turn to Sudo'833 in an effort to find a better, or at least equivalently alternative, bottle material than that of Berghahn. Thus, the person would not disregard the teaching of Sudo'833 concerning the provision of an inorganic coating for achieving this goal. Although the person may not specifically endeavor to improve the gas impermeability of the capsule, once the person learned from Sudo'833 that such impermeability increases the ability of the container to store medicine over a long period, the person would not disregard this teaching.

The Examiner appears to indicate that gas impermeability is only a concern if the product being stored is a gas. Applicant respectfully disagrees. Oxygen and nitrogen are the two largest constituents of the Earth's atmosphere. The goal of Sudo'833 is clearly not to prevent these elements from escaping from the packaging, but to prevent them from entering into the container and reacting with the stored goods (*see*, Col. 3, Lines 1-5 of Sudo'833, describing that the packaging can store "a food, a medicine, a cosmetic, a seasoning agent or the like while retaining its quality at the time of product"). Few, if any, of the mentioned items intended for storage comprise a gas. Instead, these items all degrade once exposed to air. This is also made clear by the fact that the coating is placed on the outer layer of the container (*see*, Col. 5, Lines 47-52 of Sudo'833).

Therefore, the person would not merely disregard the use of the inorganic coating as unnecessary for his/her purposes. Sudo'833 clearly teaches that the long term and stable storage of, among other things, medicine is dependent on the use of an inorganic coating in addition to the use of cyclic olefin polymer. Thus, Sudo'833 specifically teach against use of cyclic olefin polymer individually.

Furthermore, Sudo'833 discloses several possible container materials, including homopolymers and copolymers. Sudo'833 fails to provide any teaching, suggestion, motivation or reasoning regarding why the person would select COC among all the materials and modify the container of Berghahn with COC.

In addition, Sudo'833 only teaches that the entire container is made of cyclic olefin polymer, or its hydrogenation product, and coated with an inorganic material. Sudo'833 does not provide any teaching of the cap of the container made of a different material. On the other hand, Berghahn teaches that the bottle and cap are both made from

thermoplastic materials. Thus, there is no teaching, suggestion, motivation or reasoning in the prior art regarding why the person would modify the bottle material of Berghahn without also modifying the cap material.

Even if the person were to decide to use a cap of thermoplastic material with a container formed from one of the materials disclosed in Sudo'833, there is no teaching, suggestion, motivation or reasoning in the prior art regarding why the person would select a cap formed of low-density-polyethylene (hereinafter "LDPE"). Berghahn only teaches that the cap and the bottle can be formed of thermoplastic resins, for example, high or low density polyethylene, polypropylene, polystyrene and polyvinyl chloride (*see*, Col. 5, Lines 11-15 of Berghahn).

The claimed invention contemplates a capsule suitable for holding fluid. Applicant has discovered that a LDPE cap in combination with a COC capsule is particularly advantageous in this regard, because COC is a very hard, glass like material whereas LDPE is a relatively soft material. The claimed invention allows a good, liquid tight seal to be obtained between the two components. These advantages are not suggested in the prior art and cannot be achieved by the prior art.

Berghahn is not related to storage of liquid contents. Sudo'833 only teaches that liquid should be stored in a container made entirely from a cyclic olefin polymer (or its hydrogenation product) and an inorganic coating.

In summary, neither Berghahn nor Sudo'833, taken alone or in combination, teach or fairly suggest the combination of features recited in Claim 10, from which Claim 11 depends. Furthermore, there is no teaching, suggestion, motivation or

reasoning in the prior art to modify the teaching of Berghahn and Sudo'833 to arrive at the combination of features recited in Claims 10 and 11.

Accordingly, the rejection of Claims 10 and 11 under 35 U.S.C. §103(a) based on the hypothetical combination of Berghahn and Sudo'833 is overcome, and withdrawal thereof is respectfully requested.

The Examiner has further rejected Claim 18 under 35 U.S.C. §103(a) as allegedly unpatentable over Berghahn in view of Sudo'833 and further in view of U.S. Patent No. 5,723,189 to Sudo (hereinafter "Sudo'189"). Applicant respectfully traverses the rejection in light of the following remarks.

Claim 10, from which Claim 18 depends, is discussed above. Berghahn and Sudo'833 are discussed above with respect to Claim 10.

Sudo'189 is relied on to allegedly teach an ampoule within the capsule. Sudo'189 does not remedy the underlying deficiencies of Sudo'833 and Berghahn with respect to the feature of a cap consisting of cyclic olefin copolymer.

Thus, none of the references, taken alone or in any combination, teach or fairly suggest the combination of features recited by Claim 10, from which Claim 18 depends.

Accordingly, the rejection of Claim 18 under 35 U.S.C. §103(a) as allegedly unpatentable over the hypothetical combination of Berghahn, Sudo'833 and Sudo'189 is overcome, and withdrawal thereof is respectfully requested.

In view of the foregoing amendments and remarks, it is firmly believed that the subject application is in condition for allowance, which action is earnestly solicited.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Peter I. Bernstein', with a long horizontal flourish extending to the right.

Peter I. Bernstein
Registration No. 43,497

SCULLY, SCOTT, MURPHY & PRESSER, P.C.
400 Garden City Plaza, Suite 300
Garden City, New York 11530
516-742-4343 - Telephone
516-742-4366 - Fax

PIB/HC/ech